SINGARAVELU v. STATE OF PAHANG

[C.A. (Thomson C.J., Hill J.A. and Good J.A.)
May 1, 1961]

[K.L. — F.M. Civil Appeal No. 65 of 1960]

Land law — Arrears of quit rent — Sale of land under the Land Code — Steps to raise quit rent not taken timeously — Refusal of Collector to postpone sale — Whether Collector's discretion exercised properly — Land Code (Cap. 138), ss.205 and 223.

The plaintiff was the Receiver of a partnership firm which owned a piece of land. At the beginning of October 1959, the plaintiff received a notice of sale for arrears of rent to take place on November 23, 1959 at 10 a.m. On October 13, he wrote to the Collector of Land Revenue asking for an extension of time until December for the payment of the rent. No reply to this letter was received by the plaintiff, who, through his solicitors, wrote to the District Officer on November 14, informing him that the plaintiff was making an application to Court for the sale of the land and that they were asking for an extension of time up to January 31, 1960 within which to pay the quit rent in arrears. On November 20, the Collector of Land Revenue wrote to the plaintiff's solicitors informing them that he was unable to accede to their request and that in accordance with the provisions of the Land Code the land would be auctioned on November 23. The plaintiff received this letter on the morning of November 23, and at 11 a.m. of the same morning, he sent two telegraphic Money Orders in full payment of the arrears of rent. But the sale took place and the land was sold for $810. The plaintiff thereupon took out proceedings to have the sale annulled on the ground that the Collector should have exercised his discretion under section 207(ii) of the Land Code in favour of the plaintiff. In the Court below Hepworth J. held that no evidence was adduced to show that the Collector of Land Revenue had improperly exercised his discretion under section 207(ii) of the Land Code and that the sale of the 23rd November, 1959 was not contrary to the provisions of the Enactment.

Held: (1) there was not a scrap of evidence before the Collector as to how and why the appellant had failed to start to take steps earlier than he did to raise the necessary money to pay the quit rent;

(2) if there was a tender, it was made over an hour after the advertised time for sale. In view of the statutory nature of the proceedings it was for the party setting up that tender to show that it was in fact made before the time of sale.

Cases referred to:—

(1) *Re Taylor* 4 Ch. D. 160.

(2) *Inland Revenue Commissioners* v. *Blandnoch Distillery Co. Ltd.* [1948] 1 All E.R. 616, 629.

(3) *Vyramuttu* v. *State of Pahang*, 4 F.M.S.L.R. 277.

COURT OF APPEAL.

L. A. J. Smith for the appellant.

Raja Azlan Shah (Senior Federal Counsel) for the respondent.

In the Court below the following judgment was delivered by:

Hepworth J.: The plaintiff's claim is for an Order under sections 222 and 223 of the Land Code (Cap. 138) annulling the sale of the land comprised in Certificate of Title No. 3209, being Lot No. 1256 situate in the Mukim of Mentakab in the District of Temerloh in the State of Pahang containing an area of 42 acres 1 rood 28 poles, which sale took place at Temerloh on the 23rd November, 1959, under Part XVIII of the Land Code. The plaintiff also prays for an Order that the purchase money or deposit paid by the purchaser at that sale be refunded by the defendant with interest at the rate of 8 per cent per annum, and for costs.

The defendant in his defence denies that the plaintiff is entitled to the relief as claimed or any part thereof or at all and prays that the suit be dismissed with costs.

Section 223 of the Land Code requires proof by the plaintiff that:—

(a) the sale was made contrary to the provisions of the Land Code; and

(b) he has sustained substantial injury by reason of the irregularity.

The plaintiff is the Receiver of a partnership firm known as K.M.N.M. of Malacca having been appointed under an Order of the High Court at Malacca dated the 12th November, 1948, in Civil Suit No. 2 of 1941. This partnership firm at all material times owned the land referred to above. The members of the partnership firm were at all material times and are still resident in India and the plaintiff as Receiver has been managing the said land on which are planted a number of old rubber trees and has at all material times been resident in Malacca.

Up to and including the year 1957 the annual rent of the said land amounting to $255 was paid by the plaintiff. However, the rent for the years 1958 and 1959 remained unpaid and at the beginning of June, 1959 the amount outstanding including fees due was $535.50.

In or about the month of June, 1959, the Collector of Land Revenue, Temerloh, started to take action for the recovery of the rent in arrears and prepared a Notice of Sale in the form prescribed in Schedule I of the Notice of Sale Rules, 1933. This Notice is dated the 16th June, 1959 (and appears at page 2 of the Bundle of Agreed Documents admitted as "Exhibit A"). But it was not until the end of September or the beginning of October, 1959, that the plaintiff received a copy of this Notice. The public notice of sale in the form prescribed in Schedule II of the said Rules, dated the 7th June, 1959, in which the said land was advertised for sale by public auction for non-payment of quit rent for the years 1958 and 1959 was published in Notification No. 394 in the *Pahang Government Gazette* of the 15th October, 1959. The sale was to take place on the 23rd November, 1959, at 10 a.m. and 30 other pieces of land were included in this Notification to be sold at the same auction.

On the 24th August, 1959, the plaintiff wrote to the District Officer, Temerloh, asking for a valuation of the said land which he said was required for the purpose of applying to the Court for an Order (page 4A of Exhibit "A"). Nowhere in this letter did he state what Order it was he intended to apply for. On the 22nd September, 1959, the Collector of Land Revenue,

Temerloh, replied to the plaintiff informing him that his valuation of the said land was $11,760 (page 5 of Exhibit "A"). It was about 10 days after receipt of this letter that the plaintiff received the Notice of Sale (page 2 of Exhibit "A").

On the 13th October, 1959, the plaintiff wrote to the Collector of Land Revenue, Temerloh, in reference to the arrears of quit rent owing on the said land asking for an extension of time until December for the payment of the rent as he proposed to apply to the Court for an Order for the sale of the land and intended to pay the arrears as soon as the Order for sale had been granted and the sale had been made (page 6 of Exhibit "A"). It is to be noted that this letter does not in terms ask for the postponement of the sale. No reply was received by the plaintiff from the Collector to this letter.

The plaintiff, although receiving no reply to his letter, took no further action until the 14th November, 1959, nine days before the sale was due to take place, when he consulted his solicitors and instructed them to make an application on his behalf to the High Court at Malacca to sell the said land out of Court by private treaty. On the same day the plaintiff's solicitors wrote to the District Officer, Temerloh, informing him that the plaintiff was making an application to Court for the sale of the said land and asking for an extention of time up to the 31st January, 1960, within which to pay the quit rent in arrears (page 7 of Exhibit "A"). It is to be noted that again this letter does not in terms ask for the postponement of the sale. This letter to the District Officer was sent by A.R. Registered post and the Post Office acknowledgment form was returned to the plaintiff's solicitors and shows that this letter reached Temerloh on the 16th November (page 8 of Exhibit "A").

As the plaintiff's solicitors did not receive any further reply to their letter of 14th November, 1959, addressed to the District Officer, Temerloh, they inquired from him on the telephone on the 20th November, 1959, as to the position and were informed by him that he did not know but would ascertain it from the Assistant District Officer and leave a message to be delivered to the plaintiff's solicitors on the morning of the 23rd November. This appears to have satisfied the plaintiff and his solicitors although they knew that the sale was due to take place on the 23rd November, 1959, and they had been given no indication whatever that the sale was in any way likely to be postponed. It must have been obvious to them at this stage that the matter was not being dealt with by the District Officer but by one of his Assistant Collectors of Land Revenue.

On the 20th November, 1959, the Collector of Land Revenue, Temerloh, wrote to the plaintiff's solicitors informing them that he was not in a position to accede to their request and informing them that in accordance with the provisions of the Land Code the land would be auctioned on the 23rd November, 1959, and nothing could be done at such short notice (page 9 of Exhibit "A"). This letter was posted on the morning of the 21st November, 1959, which was, I understand, a Saturday. This letter was received by the plaintiff's solicitors on Monday morning the 23rd November, 1959, the date of the sale. I do not think that the posting of this letter on the 21st and not the 20th affects the issue because the Post Office acknowledgment form referred to above (page 8 of Exhibit "A") indicates that letters take 2 days to travel between Temerloh and Malacca, and the 22nd November was a Sunday.

On the 23rd November the plaintiff's solicitors at 10 o'clock in the morning again inquired by telephone from the District Officer's office when they were informed by the Chief Clerk that the land was being sold and further that the Collector had sent the plaintiff's solicitors a letter dated the 20th November, 1959. During the same telephone conversation the plaintiff's solicitors inquired whether it was possible to remit the quit rent due by telegraphic transfer and to have the sale suspended until the money was received during the course of that day, but the Chief Clerk informed them that nothing could be done in the matter as the auction was being conducted at a place some miles away from the District Office and he had no way of sending a message to the officer-in-charge of the auction.

The plaintiff alleged that it was only after this telephone conversation had taken place that the letter from the Collector dated the 20th November (page 9 of Exhibit "A") was received by his solicitors.

The plaintiff then sent two telegraphic Money Orders totalling $550 to the Collector of Land Revenue, Temerloh, (pages 12 and 13 of Exhibit "A") and a telegram informing him that he had done so. This telegram appears to have been sent at 11 a.m. (page 11 of Exhibit "A").

The result of the sale was that the land was sold for $810.

The plaintiff claims that in these circumstances the Collector should have exercised the discretion given to him by sub-section (ii) of section 207 of the Land Code in favour of the plaintiff and the fact that he did not exercise his discretion in favour of the plaintiff in the circumstances set out above shows that he did not properly exercise his discretion and that accordingly the sale was made contrary to the provisions of the Land Code and has caused the plaintiff substantial injury.

I do not think there can be any doubt that the plaintiff has sustained substantial injury. The lowest valuation of the said land appearing from the evidence was in excess of $5,000 and

the said land only fetched $810 at the auction. It remains to be decided whether that injury was sustained because the sale was made contrary to the provisions of the Land Code or because the plaintiff brought misfortune upon himself.

Substantially all the facts which I have set out above were admitted by both parties. It has not been pleaded and is no part of the plaintiff's case that the provisions of the Land Code have not been complied with meticulous accuracy, other than the exercise of the discretion given to the Collector by sub-section (ii) of section 207. The plaintiff gave evidence and also called a licensed appraiser who gave as his opinion that the value of the land was $5,660. At the close of the case for the plaintiff the learned Senior Federal Counsel who was appearing for the defendant stated, as he was entitled to do, that he would rest his case on his submissions and that he did not wish to call any evidence. The result of this was that the Collector of Land Revenue concerned was not called as a witness although he was in the Witness Room throughout the hearing. Learned Counsel for the plaintiff stated that he had written to the learned Senior Federal Counsel a few days before the hearing asking if the Collector of Land Revenue would be present as otherwise he wished to subpoena him. I gather that he was informed that the Collector of Land Revenue would be present as in fact he was. In spite of the fact that it appeared that learned Counsel for the plaintiff had wished to examine or cross-examine the Collector he made no application to reopen his case and call the Collector when the learned Senior Federal Counsel decided not to call any evidence. As in my opinion the learned Senior Federal Counsel was quite entitled not to call any witnesses if he so chose the hearing proceeded without the Collector being called to give evidence.

As I have said more than once during the course of this trial the point at issue is whether the Collector properly exercised the discretion given to him by sub-section (ii) of section 207 of the Land Code. In other words is the plaintiff saying that, when considering whether or not to exercise that discretion, the Collector has done something which he should not have done or has not done something which he should have done? It would not I think be unfair to epitomise the defence case as being that the plaintiff's real ground of complaint was not that the Collector had failed properly to exercise his discretion but that the Collector had not exercised his discretion in the plaintiff's favour, which are not necessarily one and the same thing.

When annual rent due becomes an arrear the Collector has by virtue of section 204 of the Land Code certain statutory duties which he must perform. In other words it is his duty to collect annual rent which becomes an arrear. He is allowed no discretion in the matter. The only circumstances in which the Collector may desist from the sale is if any person tenders to him at any time previous to the sale the amount of the arrear together with fees due (section 208). The only discretion which the Collector is given is to postpone any sale advertised under section 205 and in this connection sub-section (ii) of section 207 reads as follows:

> " (ii). The Collector may, if he sees fit, postpone any sale advertised under section 205 and may in his discretion notify the date, time and place of any postponed sale in such manner as may to him seem fit."

When a Collector considers whether or not to exercise the discretion given to him by sub-section (ii) of section 207 he must in my view be satisfied that circumstances exist which justify his postponing the carrying out of this duty which is imposed upon him by the statute. As Jessel M.R. stated in *Re Taylor*[1] a discretion must "be exercised not capriciously, but on judicial grounds and for substantial reasons". As individual cases depend upon individual facts it is not I think within the province of this Court to give general directions or lay down any general rules for the exercise of this discretion (*Inland Revenue Commissioners* v. *Blandnoch Distillery Co., Ltd.*[2]).

The first occasion upon which the plaintiff informed the Collector of Land Revenue, Temerloh, that he intended to apply to the Court for an Order to sell his land was in his letter of the 13th October, 1959, to which it would appear that the plaintiff received no reply. No evidence was forthcoming as to why no reply to this letter was sent. One would have thought that in the circumstances the plaintiff would have done something before the 14th November, 1959, as it must have been clear to him, had he given it a moment's thought, that he had no grounds for thinking that the sale would not continue.

The fact that letters which should have been acknowledged by the Collector were not acknowledged or that letters took longer to get from Temerloh to Malacca or from Malacca to Temerloh than was anticipated cannot possibly be construed in my view as showing in any way that the Collector wrongly exercised his discretion when deciding not to postpone the sale. Nor was the fact that the sum realised at the auction was well below the true value of the land (*Vyramuttu* v. *State of Pahang*[3]). The Collector was not to know what the purchase price would be. In fact no evidence has been led to show that he took into consideration matters which he should not have done or that he did not take into consideration matters which he should have done when deciding whether or not the sale should be postponed.

The plaintiff in his evidence said that the reason he did not send the amount in arrear until the 23rd November, 1959, and the reason why the quit rent was in arrear, was because he had no money and because he had not

been able to raise any money until then. If that is the case why did he plead in paragraph 20 of the Statement of Claim that had there been a prompt reply to his letter of the 13th October, 1959 or his Solicitors' letter of the 14th November, 1959, or a definite answer to their telephone inquiry of the 20th November, 1959, informing the plaintiff or his solicitors of the decision to proceed with the sale and of the urgency of the matter the plaintiff could have arranged for the payment of the quit rent due in time? As I have already said I do not see how failure to make these prompt replies or give a definite answer can be said to point to the wrongful exercise of his discretion. If the plaintiff could have arranged for the payment of the quit rent due in time why did he not do so? This was a certain way of preventing the sale by virtue of the provisions of section 208 of the Land Code to which I have already referred.

In all the circumstances of the case I do not consider that any evidence has been adduced that the Collector of Land Revenue improperly exercised the discretion given to him by subsection (ii) of section 207. In those circumstances the sale which took place on the 23rd November, 1959, was not made contrary to the provisions of the Enactment and accordingly the plaintiff's case fails.

The plaintiff's claim is accordingly dismissed with costs.

From this decision the plaintiff appealed to the Court of Appeal.

COURT OF APPEAL.

Thomson C.J. (delivering oral judgment): The facts of this case, which have never been and are not in dispute, are to my mind sufficiently set out in the long and careful and accurate judgment of Mr. Justice Hepworth and for myself I do not propose to repeat them.

The matter arises out of a forced sale of a piece of land, in respect of which the appellant stands in the shoes of the proprietor, for arrears of quit rent and I hope it is not necessary for me to emphasise that quit rent is part of the land revenue and to a State like Pahang prompt and efficient collection of land revenue is a matter of the very greatest public interest.

In the present case it seems to be agreed that the provisions of the Land Code regarding such sales have been complied with except, it is said, in two respects.

In the first place it is said that the Collector did not act judicially, that he did not exercise his discretion in a judicial way, when he refused to grant a postponement of the sale. In the second place it is said that the sale should have been postponed under the terms of section 208 of the Land Code by reason of tender of the amount due before the time of the sale.

In my view both these points are without merit.

As regards the Collector's exercise of discretion, or rather his refusal to exercise his discretion, there was not a scrap of evidence before him as to how and why the appellant had failed to start to take steps earlier than he did to raise the necessary money to pay the quit rent. There were promises; there were statements of what the appellant would do later on; but there was nothing to show any good reason why he had not taken steps, as they say in Scotland steps were not taken timeously.

As regards the question of tender, this of course was not a commercial sale. It was a sale by a public officer acting under statutory powers and in pursuance of a statutory duty in accordance with detailed provisions laid down by the statute. These provisions as regards notice and advertisement were, so far as we have been told, complied with in the present case.

The very most that can be said about tender was that there was a tender which at the very earliest was over an hour after the advertised time for sale. In view of the statutory nature of the proceedings it seems to me that it was for the party setting up that tender to show that it was in fact made before the time of sale. It is clear from what the learned trial Judge says that if it had in fact been made before the actual time of sale it would have been a matter of great ease to prove that at the trial because the appellant was given every opportunity to call the Collector, who was in attendance, after counsel for the Government had made it clear he was not being called as a witness for the defence.

For myself in all the circumstances of the case I would dismiss the appeal with costs, the deposit in Court to be paid to the respondent.

I would also express the hope that this appellant's fate may serve as a warning to other absentee land owners in the State of Pahang.

Hill and **Good JJ.A.** concurred.

Appeal dismissed.

PUBLIC PROSECUTOR v. LOW YONG PING

[A. Cr. J. (Ong J.) May 22, 1961]

[K.L. — Criminal Appeal No. 27 of 1961]

Criminal Law and Procedure — Adjournment — Application for by prosecution — Witnesses attending High Court action—Whether reasonable cause—Criminal Procedure Code (Cap. 6), s.259.

Road Traffic — "Dangerous driving" — Definition of — Brake-marks — Evidence of.

The absence of prosecution witnesses due to their having to attend a High Court case as witnesses is a reasonable cause for an application for adjournment of proceedings particularly when there has been no repeated postponements or adjournments previously obtained on frivolous grounds by the prosecution disentitling it to any further indulgence.

Obiter: It is impossible to define "dangerous driving," and the legislature has quite rightly not attempted to do so. Driving can become dangerous in an infinite variety of circumstances, one of which is leaving one's own proper side of the road and getting into the path